



In the claims

Please amend ~~Claims~~ 4, 9, and 16. The amended claims are set forth in the attached Clean Version of Replacement Claims for Entry During Prosecution of US Application No. 09/554,793, as well as a Version with Markings to Show Changes Made.

REMARKS

A Change of Correspondence Address is submitted herewith. Entry of that Change of Correspondence Address is respectfully requested. Claims 2-5, 7 and 9-16 are pending in the application. Claims 9 and 16 are independent claims.

The drawings are objected to under 37 C.F.R. 1.83(a). It is proposed that new figures 3-6 be added to the application. Support for the new figures may be found in the specification at page 4, third paragraph, page 12, last paragraph to page 13, first paragraph. No new matter is added by virtue of the new figures.

The abstract of the disclosure is objected to because the first sentence is a run-on sentence. The abstract has been amended as set forth in the Clean Version of Replacement Abstract for Entry During Prosecution of US Application No. 09/554,793, as well as a Version with Markings to Show Changes Made. No new matter is added by virtue of the amendment. Withdrawal of the objection is respectfully requested.

The specification has been amended to add section headings and to correct typographical errors. Further, the disclosure is objected to because of informalities. The specification has been amended as set forth in the Clean Version of Replacement Paragraphs for Entry During Prosecution of US Application No. 09/554,793, as well as a Version with Markings to Show Changes Made. No new matter is added by virtue of the amendments. Withdrawal of the objection is respectfully requested.

Claims 2 and 3 are objected to under 37 C.F.R. 1.75(c). Claim 9, from which claims 2 and 3 depend, as been amended to recite "at least one notch". Support for the amendment is found in the specification and particularly at page 4, third paragraph and page 13 lines 1-2. No new matter is added by virtue of the amendment. It is submitted that claims 2 and 3 are in proper dependent form. Reconsideration of the objection, leading to its withdrawal is respectfully requested.

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Claims 2 and 3 are rejected under 35 U.S.C. 112, first paragraph. Specifically, the rejection proffers that both the specification and drawings do not disclose nor show more than one notch. First it is noted that the application as filed contained claims 2 and 3, which recite that the device includes greater than one notch. The Examiner's attention also is directed to page 4, second paragraph where it is recited that "at least two notches are present together in one surface or are offset on opposite surfaces". Next, the Examiner's attention is drawn to page 12 last paragraph to page 13 first paragraph, where the specification teaches that, "the use of one or several adjacent staggered opposing notches are possible". As discussed above, it is proposed that new figures 3-6 be added to the application, which illustrates these notches. Accordingly, it is submitted that the specification as filed, and the drawings as amended in fact disclose and show more than one notch. Reconsideration of the rejection leading to its withdrawal is respectfully requested.

Claims 2-5, 7, and 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 4, 9, 16 have been amended. No new matter is added by virtue of the amendments.

Claims 9 and 16 have been amended to provide proper antecedent basis for "one of the surfaces". Claim 9 and 9 are now believed to be sufficiently definite.

Claim 3 depends from claim 9, which as discussed above, has been amended to recite "at least one notch". Support for the amendment is found in the specification and particularly at page 4, third paragraph and page 13 lines 1-2. Accordingly, antecedent basis for "notches" exists in dependent claim 3.

Claim 4 depends from claim 9 and has been amended to remove the phrase "capable of capillary liquid transport". Claim 4 is now believed to be sufficiently definite.

Claims 2, 5, 7, and 10-15 depend from amended claim 9. The claims as amended are believed to be sufficiently definite for purposes of 35 U.S.C. 112, second paragraph. Accordingly, reconsideration of the rejection in light of the amendment leading to withdrawal of the rejection and allowance of the claims is respectfully requested.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements. Claim 9 has been

amended to clarify its structural relationships. The surfaces are now clearly defined as the carrier and cover surfaces, the channel specifically has a sample application opening, and the phrase “at least partially discontinuous” has been replaced by the phrase “at least partially interrupted by the at least one notch”. Support for the amendment is found in the specification at page 4, paragraph 2, lines 14-16. No new matter is added by virtue of the amendments. Amended claim 9 is now believed to be sufficiently complete. Accordingly, reconsideration of the rejection in light of the amendments, leading to withdrawal of the rejection is respectfully requested.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements. Claim 16 has been amended to clarify its structural relationships. The surfaces are now clearly defined as the carrier and cover surfaces, the channel specifically has a sample application opening, the phrase “at least partially discontinuous” has been replaced by the phrase “at least partially interrupted by the at least one notch”, and the phrase “broken by” has been replaced by “adjacent to”. Support for the amendment is found in the specification and particularly at page 4, paragraph 2, lines 14-16. No new matter is added by virtue of the amendments. Amended claim 16 is now believed to be sufficiently complete. Accordingly, reconsideration of the rejection in light of the amendments, leading to withdrawal of the rejection is respectfully requested.

Claims 2-5 and 7 are rejected as based on their dependency on rejected parent claims. Claims 2-5 and 7 depend from claim 9, which as amended is believed to be sufficiently definite for purposes of 35 U.S.C. 112, second paragraph. Accordingly, reconsideration of the rejection in light of the amendment leading to withdrawal of the rejection and allowance of the claims is respectfully requested.

Claims 4, 5, 9-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,952,373 to Sugarman et al.

It is respectfully submitted that Sugarman et al. fails to disclose or suggest at least one notch in the form of a partial groove at an edge of a sample application opening. Sugarman et al. is also silent regarding a surface facing the channel opposite to the at least one notch being exposed.

Sugarman et al. instead discloses a shield for isolating excess liquid on the surface of a diagnostic cartridge from a monitor with which the cartridge is used. The cartridge 20 includes a well 22 that extends through the top of surface 21. Not one of the figures of Sugarman et al. discloses a well with a notched opening. In fact, as shown in Fig. 1, the opening to the well 22 is circular in shape with a smooth edge. There is simply no notch in the form of a partial groove at an edge of the opening to the well 22. Moreover, Sugarman et al. is silent as to a surface facing the channel opposite a notch being exposed.

With this in mind it becomes apparent that Sugarman et al. fails to disclose or suggest a device that comprises “a carrier and a cover having a surface that cooperates with a surface of the carrier to form a capillary-active channel, the channel having a sample application opening and wherein at least one notch in the form of a partial groove is located in one of the carrier and cover surfaces forming the channel at an edge of the sample application opening of the channel so that one side of the edge of the sample application opening is at least partially interrupted by the at least one notch and the surface facing the channel opposite to the at least one notch is exposed”, as required by amended claim 9.

Likewise, Sugarman et al. fails to disclose or suggest a method comprising the steps of “providing a device that comprises a carrier and a cover having a surface that cooperates with a surface of the carrier to form a capillary-active channel having a sample application opening and wherein at least one notch in the form of a partial groove is located in one of the carrier and cover surfaces forming the channel at an edge of the sample application opening of the channel so that one side of the edge of the sample application opening is at least partially interrupted by the at least one notch and the surface opposite to the at least one notch facing the channel is exposed and contacting the edge of the sample application opening adjacent to the notch with the liquid sample so that the liquid sample is transported by capillary forces into the channel”, as recited by amended claim 16.

Accordingly, claims 4, 5, 9-14, and 16 as are not anticipated and are believed to be patentable over Sugarman et al. Claims 4, 5, and 10-14 depend from amended claim

9. Reconsideration leading to withdrawal of the rejection and allowance of the claims is respectfully requested.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,952,373 to Sugarman et al. Claims 2 and 3 depend from claim 9. Arguments distinguishing claim 9 from Sugarman et al. have been presented above.

It is respectfully contended that the differences between the claimed invention and the cited art are such that Applicant's invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made. It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 103(a). Reconsideration of the rejections of the claims and withdrawal of the rejections is respectfully requested.

Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,952,373 to Sugarman et al. as applied to claims 12 and 14 above, and further in view of U.S. Patent No. 6,238,624 to Heller. Claims 7 and 15 depend from claim 9.

Heller et al. discloses a microelectronic device. As discussed above, Sugarman et al. at most discloses an opening to a well 22 that is circular in shape with a smooth edge. There is simply no notch in the form of a partial groove at an edge of the opening to the well 22. Moreover, Sugarman et al. is silent as to a surface facing the channel being exposed by a notch. Heller fails to cure the inadequacies of Sugarman et al.

Therefore, it is respectfully contended that the differences between the claimed invention and the cited art are such that Applicant's invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made. It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 103(a). Reconsideration of the rejections of the claims and withdrawal of the rejections is respectfully requested.

This application is deemed to be in condition for allowance and as such is respectfully requested. In addition, it is requested that this paper be considered as a

Petition for an Extension of Time sufficient to effect a timely response and fees be charged to Deposit Account No. 50-0877 (with reference to RDID 0043 US).

Respectfully submitted,

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